IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 26TH OCTOBER 2006 / 4TH KARTHIKA 1928

OP.No. 2502 of 2001(W)

PETITIONER:

S. NOUSHAD, NOUSHAD MANZIL, AVANEESWARAM P.O.,
KUNNICODE, KOLLAM DIST.

BY ADV. SRI.V.P.SUKUMAR
SRI.BOBBY JOHN

RESPONDENTS:
---

1. THE SALES TAX OFFICER, THODUPUZHA.

2. THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, IDUKKI
AT KATTAPPANA

3. THE COMMISSIER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

4. THE DISTRICT COLLECTOR, KOLLAM.

ADDL.5. M/S. TAMIL NADU CEMENTS CORPORATION LTD.
NO. 735, LLA BUILDING, ANNA SALAI,
CHENNAI 2

R5 IS IMPLEADED AS PER ORDER DATED 15.3.06 IN OP.

R1 RO R4 BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW
ADDL. R5 BY ADV. SRI.G.S.REGHUNATH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 26/10/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP4202 OF 2001 & CMP 35993 OF 2001 IN CMP 12604 OF 2001 BOTH IN OP 2502 OF 2001

DISMISSED

26.10.2006 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER DATED 9.2.1998 PASSED BY THE FIRST RESPONDENT

EXT.P2 TRUE COPY OF THE ORDER DATED 11.12.1998 PASSED BY THE 2ND RESPONDENT.

EXT.P3TRUE COPY OF THE APPLICATION FOR REVISION DATED 6.2.1999 FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.

EXT.P4 TRUE COPY OF THE ARGUMENT NOTE FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT AT THE TIME OF HEARING OF EXT.P3 APPLICATION FOR REVISION DATED 17.10.2000

EXT.P5 TRUE COPY OF THE APPELLATE ORDER PASSED BY THE APPELLATE ASSISTANT COMMISSIONER, COMMERCIAL TAXES, IDUKKI DATED 8.2.1999

EXT.P6 TRUE COPY OF THE ORDER DATED 12.12.2000 PASSED BY THE THIRD RESPONDENT.

EXT.P7 TRUE COPY OF THE ORDER DATED 29.12.2000 PASSED BY THE FOURTH RESPONDENT

EXT.P8 TRUE COPY OF THE ASSESSMENT ORDER DATED 10.1.2001 FOR THE YEAR 1993-94 IN THE CASE OF M/S. TAMIL NADU CEMENT CORPORATION LTD.

EXT.P9 TRUE COPY OF THE ASSESSMENT ORDER DATED 11.1.2001 FOR THE YEAR 1994-95 IN THE CASE OF M/S. TAMIL NADU CEMENT CORPORATION LTD.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR,J.

O.P.NO. 2502 OF 2001

Dated this the 26th day of October, 2006

JUDGMENT

Petitioner is challenging Ext.P6 order of the Commissioner of Commercial Taxes, confirming penalty of Rs. 14,66,250/- (wrongly shown in Ext.P4 as Rs. 1,46,625/-) under Section 45A of the KGST Act for unaccounted purchase and sale of cement from the Tamil Nadu Cement Corporation Ltd. during the year 1994-95. I heard counsel for the petitioner and Government Pleader for the respondents.

2. Petitioner's case is that though petitioner committed mistake in issuing blank C forms, petitioner has not made the purchases accounted by the seller by using the blank C forms. The Government Pleader on the other hand produced the revised sales tax assessment for the year 1994-95 and contended that inspite of an opportunity granted by the first respondent in remand, petitioner has not substantiated the claim based on Ext.P9 produced in this Court. On going through Ext.P9 I find the finding of the Tamil Nadu sales tax authority in the case of Tamil Nadu Cement Corporation Ltd. is that they have accounted

inter-State sales, but made unaccounted local sales to avoid local sales tax under the TNGST Act. In order to verify the genuineness of the assessment order of Tamil Nadu Cement Corporation Ltd. produced by the petitioner for the year 1994-95, the said Corporation was impleaded as an additional respondent. Though counsel appeared for the Corporation, counsel expressed non-co-operation from the company and stated that the company is on the verge of winding up. If the findings entered in Ext.P9 are correct and are not contested by the company, then of course the said findings are favourable to the petitioner in as much as the entire quantity and value accounted as inter-State sales by the company to the petitioner is not substantiated. However, the same will not exonerate the petitioner from penalty, because petitioner committed grave violation of the provisions of the CST Act and Rules framed thereunder, namely, CST (R & D) Rules and CST (Kerala) Rules which prohibit issue of blank C forms. By issuing blank C forms the petitioner gave licence to the selling dealer to evade tax, though not in this State, but in the other State by accounting local sales as inter-State sales. In any case, petitioner has accounted

substantial quantity of cement purchased from the same dealer outside Kerala for which blank C forms were issued. Counsel for the petitioner has pointed out that checkpost records pertaining to inter-State purchases by the petitioner tally with his account. Even though the findings in Ext.P9 and circumstances pointed out probably justify reduction in penalty, I feel petitioner cannot be totally exonerated from liability because by issuing blank C forms in violation of CST (Kerala) Rules to the seller, the possibility of unaccounted purchases also cannot be ruled out. In the circumstances, and having regard to the findings in Ext.P9 I reduce the penalty to Rs. 2.5 lakhs.

O.P. is accordingly allowed modifying Ext.P6 order to the extent indicated above.

(C.N.RAMACHANDRAN NAIR)
Judge